

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TIRON LYONS,

ANSWER

Plaintiff,

08 CIV 4743 (KMK)

-against-

THE CITY OF POUGHKEEPSIE, POLICE OFFICER
MICHAEL BARBAGALLO, POLICE OFFICER EDWIN
ACKEN and Unknown Police Officers 1-5,

Defendants.

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The defendants, by their attorneys, McCabe & Mack LLP, as and for their answer to the complaint of the plaintiff, respectfully show to the court and allege as follows.

INTRODUCTORY STATEMENT

1. With regard to paragraph numbered "1" of the complaint, neither admit nor deny as states conclusions of law.

JURISDICTION

2. With regard to paragraph numbered "2" of the complaint, neither admit nor deny as states conclusions of law.

PARTIES

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "3" of the complaint.

4. With regard to paragraphs numbered "4", "5" and "7" of the complaint, admit with respect to Barbagallo and Acken and deny knowledge or information sufficient to form a belief as to the truth of the allegations with respect to "unknown officers".

5. With regard to paragraph numbered "6" of the complaint, admit only that

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Poughkeepsie is a municipal corporation under New York law and neither admit nor deny the remaining allegations as state conclusions of law.

FACTUAL ALLEGATIONS

6. With regard to paragraph numbered "8" of the complaint, admit plaintiff was on a public street and deny he was acting lawfully. Admit Barbagallo had a K-9 unit.

7. Deny those allegations contained in paragraphs numbered "9", "10", "11", "12", "14" and "15" of the complaint.

FEDERAL CAUSES OF ACTION

8. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "15" and incorporated by reference in paragraph "16" of the complaint as if the same were more fully set forth herein at length.

9. Deny those allegations contained in paragraph numbered "17" of the complaint.

PENDANT STATE CAUSES OF ACTION

10. Repeat, reiterate and reallege each and every denial to each and every allegation contained in paragraphs numbered "1" through "15" and incorporated by reference in paragraph "18" of the complaint as if the same were more fully set forth herein at length.

11. With regard to paragraph numbered "19" of the complaint, admit plaintiff served a document entitled notice of claim and refer all questions of its content and import to the Court.

12. With regard to paragraph numbered "20" of the complaint, admit only that no payment has been made to plaintiff.

13. Deny those allegations contained in paragraphs numbered "21" and "22" of the complaint.

MUNICIPAL LIABILITY PURSUANT TO 42 U.S.C. §1983

14. Deny those allegations contained in paragraphs numbered "23" and "24" of the complaint.

ATTORNEY'S FEES

15. Deny those allegations contained in paragraphs numbered "25" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

16. All force used, if any, was reasonable and necessary.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

17. Probable cause existed for plaintiff's arrest.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

18. Plaintiff's malicious prosecution causes of action under State and Federal law fail to state claims.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

19. The individual defendants acted in good faith and are entitled to qualified immunity.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

20. Punitive damages are not recoverable against a municipality.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

21. Plaintiff's "municipal liability" cause of action fails to state a claim.

WHEREFORE, the defendants demand judgment dismissing the complaint of the

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plaintiff herein, plus the costs and disbursements of this action and for such other and further relief as to the Court may seem just and proper.

DATED: Poughkeepsie, New York
June 24, 2008

Yours, etc.

McCABE & MACK LLP

By: 

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